

**REMARKS**

In response to the Restriction Requirement issued in the above-identified application, Applicants hereby elect invention Group I (claims 1-17, 19-20, 21-32, 52-57, 59, and 73), drawn to a scaffold protein variant where the naturally occurring allergen is a pollen allergen. The election is made with traverse. Applicants reserve the right to petition for withdrawal of the Restriction Requirement under 37 C.F.R. § 1.144. Applicants request reconsideration and withdrawal of the Restriction Requirement to allow prosecution of claim groups I through VIII in the present application, for the reasons provided below.

**I. Complete Rejoinder.** With respect to the elected Group I claims and invention Groups II-VIII, X-XIII, and XVI, Applicants traverse the restriction requirement on the grounds that a complete examination of Groups I-VIII, X-XIII, and XVI, rather than Group I alone, would place no additional burden on the Examiner.

**(i) Product Claims.** The inventions set forth in Groups I through VIII are all directed to scaffold protein variants with structural similarities to naturally occurring allergens. Applicants submit that a thorough search of the subject matter of Group I would generally uncover scaffold protein variants that have three-dimensional folding patterns that are structurally similar to naturally occurring allergens. Such a search would encompass scaffold protein variants where the naturally occurring allergen originates from any source, even though the variants would be patentably distinct. Thus, scaffold protein variants encompassing the allergens of Groups I through VIII (e.g., pollen, *Poales*, *Asterales*, *Urticales*, a dust mite allergen, a cockroach allergen, a mammalian allergen, a venom allergen, or a food allergen) would be discovered in such a search. Hence, a thorough examination of the subject matter of the Group I claims would necessarily also lead to examination of the subject matter of the claims of Groups II through VIII, even though the claims in each group are drawn to patentably distinct inventions. In support of their position, Applicants respectfully note that Groups I through VIII have been classified by the Examiner into the same class (514) and subclass (12). Accordingly, examination of Groups I through VIII would place no additional burden on the Examiner. Rejoinder of the subject matter of Groups II through VIII is

therefore requested. For the foregoing reasons, the withdrawn claims drawn to these groups have not been cancelled but remain in the case.

**(ii) Process claims.** The applicants reserve their right to rejoinder of the non-elected claims prior to a notice of allowance for the elected claims of group I to the product in accordance with the guidance given by the Commissioner of Patents and Trademarks in 1184 OG 86. See *In re Ochiai*, 37 USPQ2d 1127 (Fed. Cir. 1995) and *In re Brouwer*, 37 USPQ2d 1663 (Fed. Cir. 1996). See also MPEP 821.04, which states,

Where product and process claims drawn to independent and distinct inventions are presented in the same application, applicant may be called upon under 35 U.S.C. 121 to elect claims to either the product or process. See MPEP Section 806.05(f) and Section 806.05(h). The claims to the nonelected invention will be withdrawn from further consideration under 37 C.F.R. 1.142. See MPEP Section 809.02(c) and Section 821 through Section 821.03. However, if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

It is apparent that the withdrawn process claims of Groups X to XIII and XVI include all the limitations of the elected product claims, and, thus, if the product claims of Group I are found allowable, rejoinder should be permitted prior to a notice of allowance. In view of these considerations, the non-elected claims are not cancelled.

**II. Partial Rejoinder.** Should the Examiner fail to rejoin all claims, Applicants submit that rejoinder of the following inventions Groups is warranted:

**(i) Groups I-VI.** Applicants submit that complete examination of Groups I through VI, rather than Group I alone, would place no additional burden on the Examiner. The allergens identified in Groups I through VI are all inhalation allergens. Hence, a thorough examination of the Group I claims would necessarily be coextensive with a search of the claims of Groups II through

VI. In support of their position, Applicants respectfully note that Groups I through VI have been classified by the Examiner into the same class (514) and subclass (12). Accordingly, examination of Groups I through VI would place no additional burden on the Examiner.

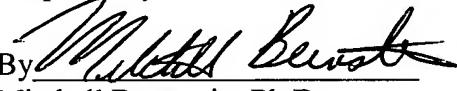
**(ii) Groups I-III.** In the alternative, Applicants submit that complete examination of Groups I through III, rather than Group I alone, would place no additional burden on the Examiner. The allergens identified in Groups II and III are merely specific types of pollen allergens. Hence, the Examination of the Group I claims would necessarily be coextensive with a search of the claims of Groups II and III. In support of their position, Applicants respectfully note that Groups I through III have been classified by the Examiner into the same class (514) and subclass (12). Accordingly, examination of Groups I through III would place no additional burden on the Examiner.

### **CONCLUSION**

Therefore, in view of the above remarks, it is respectfully requested that the application be reconsidered and that all pending claims be examined on the merits.

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Respectfully submitted,

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